

An Application for Reconsideration

- by -

Fast Trac Enterprises Ltd.

- of a Decision issued by -

The Employment Standards Tribunal
(the "Tribunal")

pursuant to Section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113

VICE-CHAIR: Norma Edelman

FILE No.: 2003/32

DATE OF DECISION: May 15, 2003

DECISION

OVERVIEW

This is an application by Mr. Albert G. Constantini, on behalf of Fast Trac Enterprises Ltd. ("Fast Trac") for reconsideration of Tribunal Decision BCEST #D143/03 (the "Preliminary Decision") wherein Mr. Constantini, Fast Trac's agent, was prohibited from making legal argument or legal submissions on behalf of Fast Trac in accordance with the decision in *Fast Trac Enterprises Ltd. v. Riverfront Corporation Centre Ltd. et. al.*, 2002 BCSC 1399 ("*Fast Trac Enterprises*").

Mr. Constantini, a former lawyer, was disbarred in 1986 as a result of serious acts of malfeasance. On October 15, 2002, a decision was rendered in *Fast Trac Enterprises* stating in part (at paras. 84 and 89):

Accordingly, there will be an order denying Mr. Constantini the privilege of appearing on behalf of any corporation before this court and neither may he appear before the Provincial Court of British Columbia...

...

... Constantini is prohibited from providing any legal advice or services to any corporation or doing any act that constitutes the "practice of law" as defined by the *Legal Profession Act*.

At the outset of the appeal hearing, counsel for the Director of Employment Standards (the "Director") made a motion that Mr. Constantini be prohibited from appearing as the agent for Fast Trac in the proceedings, citing the decision in *Fast Trac Enterprises*, supra. Counsel for the Director did not object to Mr. Constantini appearing as a witness solely for the purpose of testifying about relevant facts and circumstances relating to the issue at hand. Mr. Robert Glen, the other party to the hearing, supported the Director's motion. Adjudicator Thornicroft considered the decision of the British Columbia Supreme Court and the arguments advanced by Mr. Constantini.

The Adjudicator found that the material before him showed that Mr. Constantini is "practising law". He also noted at p. 6:

...Taylor J.'s order, at paragraph 89, has *two* separate components, namely, "providing any legal advice or services to any corporation" (an order that encompasses Fast Trac) *or* "doing any act that constitutes the 'practice of law' as defined by the *Legal Profession Act*". If Mr. Constantini's representation of Fast Trac in these proceedings does not contravene the second component, in my view, it most certainly contravenes the first. (emphasis in original)

After responding to Mr. Constantini's submissions, Adjudicator Thornicroft made the following order at p. 7 of his reasons:

I order that Mr. Constantini be prohibited from making any legal argument or legal submissions on behalf of Fast Trac in this appeal. To put it another way, my order simply recognizes and effectuates the terms of Taylor, J.'s valid and subsisting order. My order does not prohibit Mr. Constantini from providing evidence, based on his own personal knowledge, regarding the relevant facts and circumstances with respect to Mr. Glen's unpaid wage claim.

ARGUMENT

In his reconsideration application, Mr. Constantini, on behalf of Fast Trac, argues there are three reasons to reconsider the Preliminary Decision. First, he argues there has been a breach of the rules of natural justice. He says that he is included in the definition of "person" under the *Interpretation Act* and the *Employment Standards Act*. As the duly authorized officer and office manager of Fast Trac, Mr. Constantini argues the Tribunal has no right to prevent him from representing Fast Trac. Second, he argues that the decision is procedurally unfair in that the Preliminary Decision takes away the right to represent himself, as provided for in the *Employment Standards Act*. Third, he argues there has been a fundamental error in law. He argues that the practice of law or the providing of legal service contemplates one person providing advice to another person. He argues that he is Fast Trac. Therefore, he is not practicing law or providing legal advice as is contemplated in the legislation.

ISSUES

This application gives rise to the following issues:

1. Whether we should reconsider the adjudicator's decision; and
2. If we should reconsider the adjudicator's decision, should it be reversed?

ANALYSIS AND DECISION

One of the purposes of the *Employment Standards Act* is to provide fair and efficient procedures for resolving disputes: s.2(d). In deciding whether a matter warrants reconsideration, that fact that an application arises out of a preliminary ruling made in the course of an appeal is a factor that has been held to weigh against a reconsideration: *Milan Holdings Ltd.* BCEST #D313/98 ("*Milan Holdings*"). Accordingly, the Tribunal generally declines to reconsider preliminary or interlocutory decisions until a final decision has been rendered in order to avoid multiplicity of proceedings, confusion or delay: *World Project Management Inc.*, BCEST #D134/97 (Reconsideration of BCEST #D325/96).

In considering whether an applicant has made out an arguable case of sufficient merit to warrant reconsideration, the primary factor weighing in favour of reconsideration is whether the applicant has raised questions of law, fact, principle or procedure which are so significant that they should be reviewed because of their importance to the parties and/or their implications for future cases: *Milan Holdings*, supra.

This application seeks reconsideration of a preliminary decision. We are doubtful that it meets the Tribunal's test for reconsideration set out in *Milan Holdings*, supra. Nonetheless, as this is an unusual case, we have assessed the reconsideration application on its merits and we uphold the Preliminary Decision.

Mr. Constantini argues that he and Fast Trac are one "person" as defined by the *Interpretation Act*. Therefore, he says by denying him the right to appear as Fast Trac's representative before the Tribunal, the Adjudicator has denied Fast Trac the right to appear before the Tribunal. We do not accept this argument. Fast Trac is a "person" and Mr. Constantini is a "person". However, they are not one and the same person. Mr. Constantini is an officer of Fast Trac (he is neither a director nor a shareholder) and

has been authorized by the director of Fast Trac to appear on behalf of that company. This does not make Mr. Constantini a party to the proceeding. Fast Trac is a party to the proceeding. Mr. Constantini is not. Mr. Constantini is only representing Fast Trac; denying him a right to appear as Fast Trac's representative does not deny Fast Trac a right to appear.

It is open to Fast Trac to engage a lawyer to file legal argument or submissions. However, as noted in the Preliminary Decision, that lawyer must be duly qualified to practice law in the Province of British Columbia. Fast Trac may also authorize a non-lawyer (other than Mr. Constantini) to act as its agent. Fast Trac has not been refused audience before the Tribunal. The Preliminary Decision does not prevent Fast Trac from filing submissions or making arguments, as alleged by Mr. Constantini. Only Mr. Constantini has been prohibited from appearing, filing legal submissions and making legal arguments on behalf of Fast Trac.

Mr. Constantini also argues that the Tribunal erred in finding that he was practising law and was providing legal advice in representing Fast Trac. He argues that a person is not practising law when he acts for himself or as a duly authorized officer of a corporation. Similarly, he argues that he is not providing legal advice because the concept of legal advice contemplates that the advice is provided to another person. He argues that he is not providing advice to another person, he is essentially providing advice to himself (as Fast Trac), and therefore his actions cannot be captured under the definition of legal advice. We reject this argument for the same reasons as earlier stated: Mr. Constantini is not acting for himself; he is acting for Fast Trac. At page 6 of the Preliminary Decision, Adjudicator Thornicroft states:

Finally, Mr. Constantini says that he is entitled to the benefit of subsection 15(1)(a) of the *Legal Profession Act*. This provision states that a person is not practising law if they are "an individual party to a proceeding acting without counsel solely on his or her behalf". Mr. Constantini, at one point during argument before me, maintained that he was acting on his own behalf but later resiled from that position. Regardless of what Mr. Constantini's actual position may be, the simple fact is that he is not a party to these proceedings; his status in this appeal is solely that of a representative of Fast Trac. This appeal does not concern a section 96 determination issued against him in his personal capacity. Accordingly, he cannot rely on the section 15(1)(a) exemption.

The Adjudicator considered these arguments and the relevant legislation and came to a determination after hearing Mr. Constantini's submissions. We find the conclusions in the Preliminary Decision to be correct. Therefore we do not find a fundamental error of law in the Preliminary Decision.

With respect to the argument that the Tribunal has breached the rules of natural justice by denying Mr. Constantini the ability to participate as Fast Trac's agent in the hearing, Mr. Constantini continues to argue that to deny him the ability to act on behalf of Fast Trac is to deny Fast Trac the right to appear before the Tribunal. Again, Fast Trac is not prevented from appearing before the Tribunal. Fast Trac may appear before the Tribunal by way of an agent other than Mr. Constantini. Therefore there has been no breach of the rules of natural justice.

Finally, with the respect to the argument that the Tribunal has acted in a procedurally unfair manner through the involvement of the Director and through an order that Fast Trac can only make legal argument through a licensed lawyer, we find no evidence that the Tribunal has acted in a procedurally unfair manner. First, as Fast Trac is appealing the determination of the Director, the Director has a right to be party to the proceeding and to make submissions. Second, the Preliminary Decision should not be read to state that Fast Trac may only make legal submissions through a lawyer. Rather, if Fast Trac wishes to use a lawyer to make legal submissions or arguments, that lawyer must be duly qualified to

practice law in the province of British Columbia. Fast Trac may also appear by way of an agent duly authorized by Fast Trac (other than Mr. Constantini). Thus, for example, the director of Fast Trac may appear to make submissions on behalf of Fast Trac.

CONCLUSION AND ORDER

For all of the above reasons, the application for reconsideration is dismissed and the Preliminary Decision is confirmed.

Norma Edelman
Vice-Chair
Employment Standards Tribunal